IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5580 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Or

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5. Whether it is to be circulated to the Civil Judge? : NO

SUKHLAL KHUSHALDAS POLISHWALA

Versus

SUPERINTENDENT

Appearance:

NANAVATI ASSOCIATES for Petitioners

Mr.K.T.Dave, Ld.Asst.GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/08/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, Ld.AGP waives service of rule for respondents.

2. The partnership firm in the name of M/s Shuklal Khusaldas at Surat was granted five licences under the Bombay Prohibition Act, 1949 for manufacturing and selling denatured spirit. Licenses were being renewed, from time to time, and they were lastly renewed for the period upto 31.5.2000. By letter dated 23.5.2000 one of the partners Kantilal Lallubhai Polishwala requested the Superintendent of Prohibition and Excise at Surat to suspend the licences with immediate effect on the ground that there are disputes amongst the partners and the applicant was intending to dissolve the partnership firm and therefore the applicant was not desirous of getting the licenses renewed.The applicant requested that until the dispute of dissolution was not resolved the licences may be immediately suspended. At his instance,the impugned orders dated 31.5.2000 (annexure "J" collectively to the petition) were passed under the Bombay Prohibition Act and hence this petition came to be filed by two out of four partners.

3. During the course of hearing of this petition Civil Application No.5566/2000 came to be filed by the other two partners for being impleaded as party respondents. The Civil Application has been granted today and they are permitted to be joined as party respondent Nos 3 & 4.

4. At the hearing of this petition, the final picture that has emerged is that out of four partners three partners, i.e. petitioner Nos 2 and 3, namely, Lallubhai Sukhlal and Nareshkumar Lallubhai and respondent No.4 Sashikant Lallubhai Polishwala are all interested in getting the licences renewed and that they want to carry on the business on the strength of such licences. It is only respondent No.3 Kantilal Lallubhai Polishwala who is objecting to renewal of the licences on the ground that unless his disputes with the other partners are resolved he has right to object to renewal of the licences.

5. Mr.K.T.Dave, Ld.AGP for respondent Nos 1 & 2 authorities states that as per the application dated 23.5.2000 respondent No.3 Kantilal Lallubhai Polishwala had only objected to renewal of licences and had applied for suspension of licences and as otherwise also the validity period of licence has come to an end on 31.5.2000 by efflux of time. It is further submitted that the partnership firm was having five licences in so far as denatured spirit is concerned and if the partners do not carry on the business properly there may be possibility of misuse of licences and, therefore, also

the authority is justified in passing the impugned order of suspension of licence.

6. Having heard the learned counsel for the parties it appears to the Court that even if there are disputes amongst partners, one of them does not have (and can not be given) veto power to stop the other partners from carrying on the business nor can he compel the licensing authority to suspend the licences merely because his claims are not settled by the other partners. It is true that if there is any misuse of any of the licences the respondent authorities have all powers under relevant Act and Rules to take appropriate action against the persons who are guilty of committing such illegality.

7. The apprehension of the respondent No.3 is that in case petitioner Nos 2, 3 & and respondent No.4 commit any act of commission or omission respondent No.3 may be liable. In order to take care of this apprehension, it would be open to petitioner Nos 2 & 3 and respondent No.4 to submit application on behalf of the petitioner No.1 firm making it clear that they undertake the responsibility of carrying on the business and the licence may be renewed. In fact, Mr.K.S.Nanavaty, learned Counsel for the petitioner states that such an application was already made on 18.5.2000. It will be open to the petitioners and the respondent No.4 to submit additional application pointing out the aforesaid aspect.

8. In the result, the petition is allowed. The impugned orders dated 31.5.2000 at annexure "J" collectively to the petition are set aside and respondent Nos. 1 & 2 are directed to consider the application dated 18.5.2000 along with additional application which may be made by the petitioners and respondent No.4 within one month from today, without being influenced by the letter dated 23.5.2000 from the respondent No.3. Respondent Nos 1 & 2 shall take decision on the applications as expeditiously as possible and in any case within two weeks from the date of receipt of additional application. Rule is made absolute accordingly. There shall be no order as to costs.

25.8.2000 (M.S.SHAH,J)